

1 HONORABLE RICHARD A. JONES
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARLES BOYD OLSEN, *et al.*,

Plaintiffs,

v.

UNISON AGREEMENT
CORPORATION,

Defendant.

Case No. 2:22-cv-01859-RAJ

**ORDER GRANTING MOTION
TO COMPEL ARBITRATION**

19 **I. INTRODUCTION**

20 This matter comes before the Court on Defendant's Motion to Compel Arbitration.
21 Dkt. # 8. Having considered the submissions of the parties, the relevant portions of the
22 record, and the applicable law, the Court finds that oral argument is unnecessary. For the
23 reasons below, the motion is **GRANTED**.

24 **II. BACKGROUND**

25 In December 2022, this matter was removed from King County Superior Court.
26 Dkt. # 1. According to the complaint, Plaintiffs entered into a "HomeOwner Agreement"
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1 (“Agreement”) with Defendant Unison Agreement Corporation (“Unison”). Under the
2 Agreement, Plaintiffs received a monetary payment from Defendant and Defendant
3 received an option to acquire equity in Plaintiffs’ homes. Dkt. # 1-1, ¶ 1.1. The
4 Agreement signed by Plaintiff Maggie Colin contains several sections relating to
5 arbitration, including the following clauses:

6 20.1 You and Investor agree that either party may, at its sole election,
7 choose to submit to neutral, binding arbitration pursuant to this Section 20
8 (the “Arbitration Provision”) rather than court action the following
9 controversies (which will be called “Claims”): any past, present, or future
10 claim, dispute or controversy (including matters arising as initial claims,
11 counter-claims, cross-claims, third-party claims, or otherwise) whether in
12 contract, tort (intentional or otherwise), constitution, statute, common law,
13 principles of equity, or otherwise, between you and Investor or Investor’s
14 employees, directors, agents, successors or assigns, which arises out of or
relates to the HomeOwner Agreement, including any dispute regarding an
Appraised Value of the Property, Remodeling Adjustment or Deferred
Maintenance Adjustment, or any resulting transaction or relationship
(including any such relationship with third parties who do not sign this
contract)

15 ...
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17 20.3 The scope of this Arbitration Provision is to be given the broadest
18 possible interpretation that is enforceable. The interpretation and scope of
19 this Arbitration Provision, and the arbitrability of any Claim shall be
resolved by neutral, binding arbitration and not by a court action. If any
portion of this Arbitration Provision is deemed invalid or unenforceable,
the remaining portions of this Arbitration Provision shall nevertheless
remain valid and enforceable.

22 Dkt. # 10 at 34.

23 Now, Unison moves to stay proceedings and compel arbitration of Colin’s claims.

24 Dkt. # 8. The motion is ripe for review.

25 **III. DISCUSSION**

26 Because the Federal Arbitration Act (“FAA”) requires courts to “direct the parties
27 to proceed to arbitration on issues as to which an arbitration agreement has been signed,

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1 the FAA limits court involvement to determining (1) whether a valid agreement to
 2 arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at
 3 issue.” *Cox v. Ocean View Hotel Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008) (internal
 4 quotation marks omitted). These “gateway questions of arbitrability” are presumptively
 5 “within the province of judicial review.” *Momot v. Mastro*, 652 F.3d 982, 987 (9th Cir.
 6 2011) (quoting *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002)).

7 That said, parties may agree to delegate such gateway issues to an arbitrator for
 8 the arbitrator to decide. *Id.* The parties must delegate “clearly and unmistakably.” *Id.*
 9 “Clear and unmistakable ‘evidence’ of agreement to arbitrate arbitrability might
 10 include . . . a course of conduct demonstrating assent . . . or . . . an express agreement to
 11 do so.” *Id.* at 988 (alteration omitted) (quoting *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S.
 12 63, 79 (2010) (Stevens, J., dissenting)); *see also Brennan v. Opus Bank*, 796 F.3d 1125,
 13 1130 (9th Cir. 2015) (“[G]ateway issues can be expressly delegated to the arbitrator
 14 where ‘the parties *clearly and unmistakably* provide otherwise.’” (emphasis in original)
 15 quoting *AT & T Techs., Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643, 649 (1986)).
 16 The Court finds that the clause here “clearly and unmistakably” delegates threshold
 17 issues to an arbitrator: “The interpretation and scope of this Arbitration Provision, and the
 18 arbitrability of any Claim shall be resolved by neutral, binding arbitration and not by a
 19 court action.” *Id.* § 20.3.

20 In opposing the motion, Plaintiff makes two primary arguments. First, Plaintiff
 21 says that the delegation clause is prohibited by federal law—specifically, that the Dodd-
 22 Frank Act “prohibits requirements to arbitrate ‘any controversy’ .. in mortgages and
 23 consumer credit agreements secured by the consumer’s home.” Dkt. # 26 at 12 (citing 15
 24 U.S.C. § 1639c(e)(1)). Second, Plaintiff argues the arbitration provision is procedurally
 25 unconscionable. *Id.* at 15.

26 Both arguments fail. Plaintiff’s Dodd-Frank argument is one that attacks the
 27 underlying merits—*i.e.*, whether the parties’ dispute falls within the scope of §
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1 1639c(e)(1)'s protections against arbitration. While the Court agrees that there is a live
 2 threshold dispute, nothing within the Dodd-Frank Act prohibits who is empowered to
 3 decide arbitrability in the first instance. Indeed, several circuits have found such
 4 arguments unpersuasive upon a clear and unmistakable delegation clause. *See, e.g.,*
 5 *Caremark, LLC v. Chickasaw Nation*, 43 F.4th 1021, 1034 (9th Cir. 2022) (rejecting
 6 theory that the Recovery Act displaces the arbitration provisions in the parties' agreement
 7 because that argument did not impugn the validity of the delegation clause); *Attix v.*
 8 *Carrington Mort. Serv., LLC*, 35 F.4th 1284, 1307 (11th Cir. 2022) (argument that Dodd-
 9 Frank Act gave plaintiff the right to prosecute claims in federal court disputed the
 10 enforceability of the parties' primary arbitration agreement, not the delegation clause
 11 specifically).

12 Because the agreement unmistakably delegates arbitrability questions to the
 13 arbitrator," the only question left is whether the delegation provision itself is
 14 unconscionable. *Brennan*, 796 F.3d at 1132 (emphasis omitted). Under Washington law,
 15 the complainant must show that the party offering a contract of adhesion "refused to
 16 respond to her questions or concerns, placed undue pressure on her to sign the agreement
 17 without providing her with a reasonable opportunity to consider its terms, and/or that the
 18 terms of the agreement were set forth in such a way that an average person could not
 19 understand them." *Zuver v. Airtouch Commc'ns, Inc.*, 153 Wn.2d 293, 306-07 (2004).
 20 Plaintiffs do not set forth any facts sufficient meet this burden.

21 In sum, gateway issues of arbitrability—such as whether a valid arbitration
 22 agreement exists, or whether the agreement covers the instant dispute—are for the
 23 arbitrator, not the Court, to decide.

24 IV. CONCLUSION

25 For the reasons stated above, the Court **GRANTS** Unison's Motion to Compel
 26 Arbitration. Dkt. # 8. Unison, as the proponent of arbitration, must submit a brief report
 27 on the status of the arbitration beginning on August 15th and on the fifteenth day of every
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1 second month thereafter. The parties shall immediately notify the Court of the
2 conclusion of arbitration.

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4 DATED this 27th day of June, 2023.

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The Honorable Richard A. Jones
United States District Judge